

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA K. SPRUILL and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY AGENCY, Carlisle, PA

*Docket No. 98-1498; Submitted on the Record;
Issued March 13, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability commencing June 13, 1997, causally related to her accepted April 30, 1996 employment injury.

On May 24, 1996 appellant, then a 36-year-old sales clerk, filed a claim for traumatic injury alleging that on April 30, 1996 she sustained an injury bilaterally to her hands and arms while in the performance of duty. The Office of Workers' Compensation Programs accepted that appellant sustained overuse syndrome of both hands. Appellant continued to work in a light-duty position until May 22, 1996 when she stopped work; she returned to work on May 28, 1996 and continued to perform light duty thereafter, as recommended by her treating physician.

By report dated January 24, 1997, Dr. Daniel P. Hely, a Board-certified orthopedic surgeon, noted that appellant was not improving, that examinations continued to demonstrate no evidence of neurological deficit, full range of motion in both hands, and no objective findings of electromyographic abnormality. Dr. Hely diagnosed bilateral hand pain associated with activity with etiology unclear. He noted that an expected date of recovery was inestimable but that she should continue with limited activity performing no repetitive work, with her restrictions "not supported by any objective findings on clinical examination." Dr. Hely reiterated his opinion on March 5, 1997, noting that appellant's treatment had consisted of avoiding repetitive activity.

On April 15, 1997 the employing establishment proposed removal of appellant from her light-duty position due to her inability to meet the physical requirements of the position. The employing establishment noted that identifying at least one position compatible with her physical restrictions had proven impossible. This removal became effective on June 13, 1997.

In an office note dated May 9, 1997, Dr. Hely noted that appellant complained of ongoing symptoms of pain in both arms with the addition of paresthesias, but that examination failed to show any objective findings, no sensory or motor dysfunction, no atrophy, and full

range of motion. A May 23, 1997 note reiterated Dr. Hely's previous findings of no objective evidence to support appellant's symptoms of pain.

On June 23, 1997 appellant filed a claim for a recurrence of disability commencing June 13, 1997. However, an August 27, 1997 note from Dr. Hely noted appellant's continuation of symptoms without change and added the occurrence of shoulder pain in both upper extremities. He noted that examination demonstrated no abnormality in appellant's neck, shoulders or hands, wrists and elbows; he identified diffuse muscle weakness but no atrophy or sensory deficit and normal nerve function. Dr. Hely diagnosed bilateral upper extremity pain, etiology not clear, no objective findings to support a diagnosis, and recommended activity based upon symptoms.

By decision dated October 6, 1997, the Office denied appellant's recurrence claim finding that the medical evidence of record did not establish a causal relationship between the claimed recurrence and appellant's accepted bilateral overuse syndrome of her hands.¹

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing June 13, 1997, causally related to her April 30, 1996 overuse syndrome injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, or whose medical evidence of record establishes that he or she can perform the work of a light-duty position, the employee has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.² As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

Appellant has not met this burden in the instant case.

In this case, appellant submitted two reports and several office notes from her treating orthopedic surgeon, Dr. Hely, some of which are reasonably contemporaneous with her claimed recurrence of disability. Dr. Hely remarked in these office notes that appellant had symptoms of pain in both arms but had no objective findings to support such symptomatology upon examination. He indicated in his May and August 1997 notes that appellant had no sensory or motor dysfunction, no atrophy and a full range of motion, and no other objective evidence to support her presenting symptoms or pain. Dr. Hely noted that the etiology of appellant's pain and paresthesias was not clear, and that there was no objective evidence to support a diagnosis.

As Dr. Hely's reports and notes support that there was no objective basis for appellant's symptomatology or for a specific diagnosis, he has not established a causal relationship between

¹ A second opinion examination had been scheduled but not completed at the time of this decision.

² *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Id.*

appellant's spring of 1997 symptomatology and her original overuse syndrome of April 30, 1996. Therefore he has not established that there is a causal relationship between appellant's April 30, 1996 overuse syndrome and the work restrictions he had been recommending since January 1997, but instead had actually noted that appellant's work restrictions were "not supported by any objective findings on clinical examination." Dr. Hely's reports consequently do not support that the recommended restrictions at least from January 24, 1997 were for an injury-related condition, or that light duty was warranted as causally related to residuals from the April 30, 1996 overuse syndrome. Additionally, Dr. Hely's reports do not document a change in the nature or extent of appellant's injury-related condition, nor confirm that any change in the nature or extent of her light-duty requirements occurred, such that she could no longer perform the light duty that she had been performing continuously since May 28, 1996.

As appellant has not demonstrated any change in the nature or extent of her light-duty job requirements, such that she could physically no longer perform the assigned duties, and has not submitted medical evidence supporting a change in the nature or extent of her injury-related condition, she had failed to meet her burden of proof to establish her recurrence claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 13, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member